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## Reasons for Decision

**Maritimes & Northeast  
Pipeline Management Ltd.**

**GH-4-99**



**November 1999**

**Facilities**



# National Energy Board

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## Reasons for Decision

In the Matter of

**Maritimes & Northeast  
Pipeline Management Ltd.**

Saint John Lateral Facilities Application  
dated 5 June 1998, as amended

**GH-4-99**

**November 1999**

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## **Approximate Conversions**

1 metre	=	3.28 feet
1 kilometre	=	0.62 miles
1 cubic metre	=	35.3 cubic feet
1 gigajoule	=	0.95 MMBtu
1 hectare	=	2.47 acres
1 000 kilopascal	=	145 psi
1 000 cubic metres	=	38.86 gigajoules

## Abbreviations

AFUDC	allowance for funds used during construction
Agency	Canadian Environmental Assessment Agency
$10^3 \text{m}^3/\text{d}$	thousand cubic metres per day
$10^6 \text{m}^3/\text{d}$	million cubic metres per day
$10^9 \text{m}^3$	billion cubic metres
Bayside	Bayside Power LP
Board or NEB	National Energy Board
Btu	British thermal unit
CEAA	<i>Canadian Environmental Assessment Act</i>
CSR	Comprehensive Study Report
DFO	Department of Fisheries and Oceans Canada
Duke	Duke Energy Marketing Limited Partnership
EPN	Early Public Notification
EPP	Environmental Protection Plan
FSA	Firm Service Agreement
GDP	Gross Domestic Product
GFR	NEB's <i>Guidelines for Filing Requirements</i>
GJ/d	gigajoules per day
GNB	Gas New Brunswick
ha	hectare
Irving Oil	Irving Oil Limited
J.D. Irving	J.D. Irving, Limited
JRP	Joint Review Panel
km	kilometre
KP	kilometre post

kPa	kilopascals
LOC	Letter of Commitments
m	metre
mm	millimetre
MMBtu/d	million Btus per day
M&NP	Maritimes & Northeast Pipeline Management Ltd.
M&NP's mainline	pipeline to ship natural gas from SOEP's gas plant near Goldboro, Nova Scotia to markets in the Maritimes and northeastern United States
MN365	365 day firm transportation service
NB Power	New Brunswick Power Corporation
NEB Act	<i>National Energy Board Act</i>
NPS 4	nominal pipe size 4" (114.3 mm outside diameter)
NPS 16	nominal pipe size 16" (406.4 mm outside diameter)
New Brunswick	Province of New Brunswick
OPR 99	NEB's <i>Onshore Pipeline Regulations, 1999</i>
psi	pounds per square inch
Saint John Lateral	natural gas pipeline lateral from M&NP's mainline to Saint John and the Lake Utopia area
SEIA	Socio-Economic Impact Assessment
SOEP	Sable Offshore Energy Project
Supplementary Report	Saint John Lateral Pipeline Project Supplementary Information Report
Tcf	trillion cubic feet
TEK	Traditional Ecological Knowledge
TTWG	Tolls and Tariff Working Group
TWR	temporary work room
UNBI	Union of New Brunswick Indians
VSECs	Valued Socio-Economic Components

## Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the Regulations made thereunder;

AND IN THE MATTER OF an application by Maritimes & Northeast Pipeline Management Ltd. (M&NP) on behalf of Maritimes & Northeast Pipeline Limited Partnership for a Certificate of Public Convenience and Necessity authorizing the construction and operation of a lateral pipeline from a point on M&NP's mainline near Big Kedron Lake, New Brunswick to the City of Saint John and the Lake Utopia area pursuant to Part III of the NEB Act and related tolling orders pursuant to Part IV of the NEB Act;

AND IN THE MATTER OF the National Energy Board Hearing Order GH-4-99;

HEARD at St. Andrews, New Brunswick, on 12, 13 and 14 October 1999.

BEFORE:

R. Harrison	Presiding Member
J.-P. Théorêt	Member
E. Quarshie	Member

APPEARANCES:

L.E. Smith	Maritimes & Northeast Pipeline Management Ltd.
N. Gretener	
S. Carson	Greater Saint John Economic Development Commission
Chief Benjamin Paul	Union of New Brunswick Indians
I. Anderson	United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
H.T. Soudek	Gas New Brunswick
J.H. Smellie	Irving Oil Limited
J.F. Rook, Q.C.	J.D. Irving Limited
G. Cameron	Maritimes NRG (Nova Scotia) Limited
A. Murphy	Mobil Oil Canada Properties
J. MacIsaac	Nova Scotia Power Incorporated
M. Imbleau	Société en commandite Gaz Métropolitain

I. Blue, Q.C.	Province of New Brunswick
A. Hamilton	
A.W. Moreira, Q.C.	Province of Nova Scotia Petroleum Directorate
M. Proud	Province of Prince Edward Island
I.W.H. Bailey	
G. Delisle	Board Counsel

# **Chapter 1**

## **Introduction**

---

### **1.1 Background**

In June 1996, Sable Offshore Energy Project (SOEP) applied to the National Energy Board (Board or NEB) for a Certificate of Public Convenience and Necessity to construct certain offshore and onshore pipelines, and related facilities, to transport gas produced in the offshore area near Sable Island. In October 1996, Maritimes & Northeast Pipeline Management Ltd. (M&NP) applied for a Certificate of Public Convenience and Necessity to construct and operate an onshore pipeline to ship natural gas developed by SOEP from SOEP's gas plant near Goldboro, Nova Scotia to markets in the Maritimes and northeastern United States (M&NP's mainline). Both SOEP's and M&NP's applications were considered by a five person Joint Review Panel (JRP) at a public hearing during the spring and summer of 1997. The JRP Report was issued in October 1997, and the Board's GH-6-96 Reasons for Decision were issued in December 1997.

### **1.2 Section 52 Application**

On 5 June 1998, M&NP, on behalf of Maritimes & Northeast Pipeline Limited Partnership, applied to the Board for a Certificate of Public Convenience and Necessity, pursuant to Part III, section 52 of the *National Energy Board Act*<sup>1</sup> (NEB Act) to construct and operate a natural gas pipeline lateral (Saint John Lateral) from a point on M&NP's mainline in New Brunswick to the City of Saint John and the Lake Utopia area. M&NP also applied under Part IV of the NEB Act for an order pursuant to the M&NP Lateral Policy, attached as Appendix III, confirming that no customer contribution-in-aid of construction is required and that the full cost of service for the Saint John Lateral be included in the calculation of M&NP's tolls.

As shown in Figure 1-1, the Saint John Lateral would consist of approximately 102 km of 406.4 mm outside diameter (NPS 16) pipeline from a point on M&NP's mainline near Big Kedron Lake to the City of Saint John and approximately 8 km of 114.3 mm outside diameter (NPS 4) pipeline and associated facilities to the Lake Utopia area. It would also include associated metering, control and pressure regulation facilities.

The Board held a public hearing to consider M&NP's Saint John Lateral Application at St. Andrews, New Brunswick from 12 October to 14 October 1999.

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<sup>1</sup> R.S.C. 1985, c. N-7

## **1.3 Environmental Assessment**

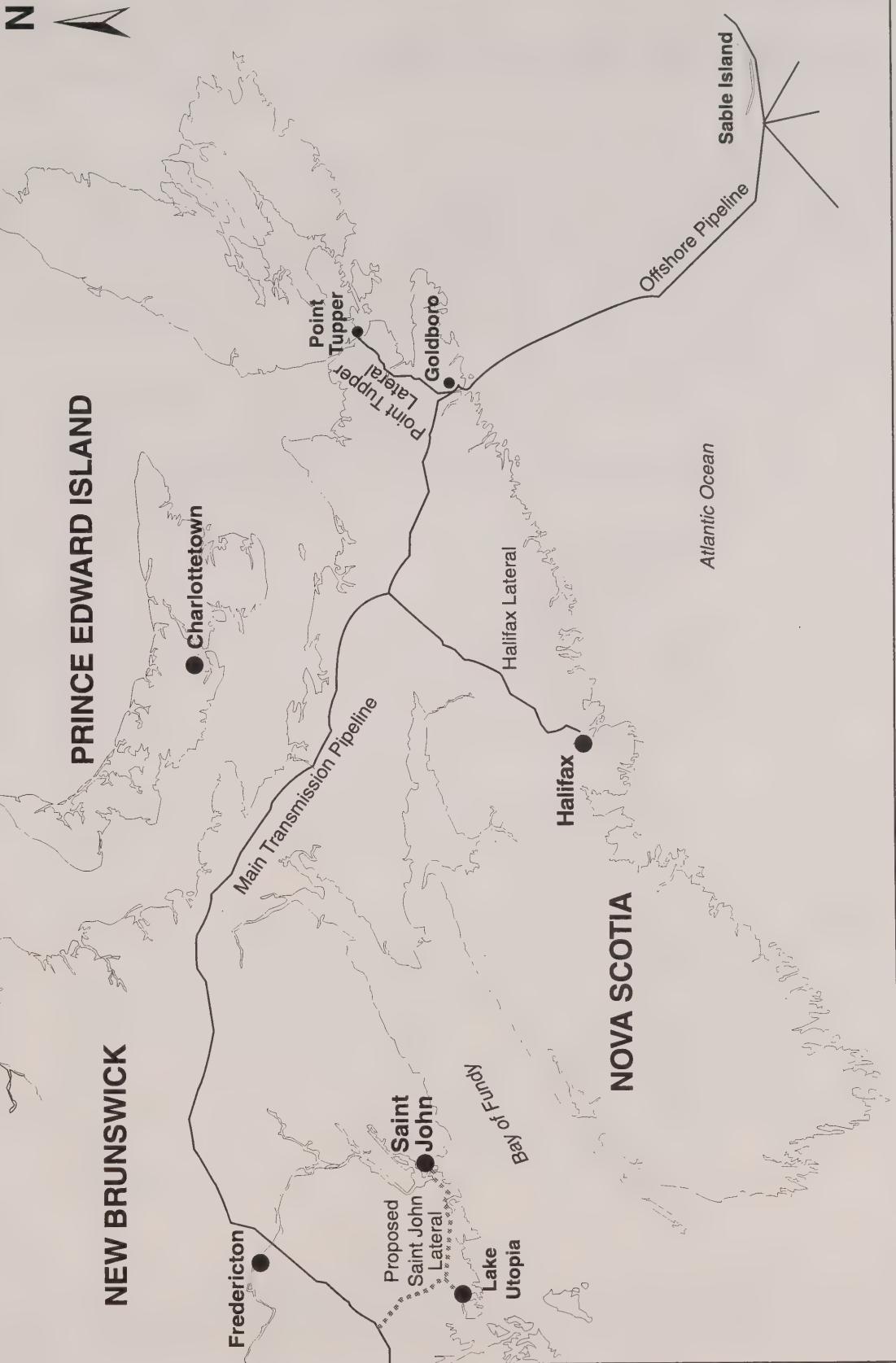
On 2 October 1998, the Board, as lead responsible authority for the Saint John Lateral Project, delegated the preparation of the Comprehensive Study Report (CSR), an environmental assessment of the Saint John Lateral, to M&NP pursuant to section 17 of the *Canadian Environmental Assessment Act*<sup>1</sup> (CEAA). The CSR was completed and submitted to the Minister of the Environment on 9 July 1999. Having taken into consideration M&NP's CSR, public comments filed pursuant to subsection 22(2) of the CEAA and the recommendations of the Canadian Environmental Assessment Agency (Agency), the Minister of the Environment concluded that the Saint John Lateral Project is not likely to cause significant adverse environmental effects. As a result, on 4 October 1999 the Minister of the Environment referred M&NP's proposed Saint John Lateral Project back to the Board and the Department of Fisheries and Oceans Canada (DFO), the other responsible authority for the project, for action under subsection 37(1) of the CEAA.

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<sup>1</sup>

S.C. 1992, c. 37

**Figure 1-1**  
**Routes for M&NP's Facilities**



## Chapter 2

# Facilities and Pipeline Safety

---

### 2.1 Facilities Description

The Saint John Lateral, as proposed by M&NP, would consist of approximately 102 km of NPS 16 natural gas pipeline extending from a point on M&NP's mainline near Big Kedron Lake to delivery points in the City of Saint John. There would also be an extension off the Saint John Lateral from kilometre post (KP) 39.9 to the Lake Utopia area, a distance of approximately 8 km and constructed from NPS 4 line pipe. The estimated capital cost of the proposed project is approximately \$93 million. (See Table 2-1 for a breakdown of these costs.)

**Table 2-1**  
**Saint John Lateral Pipeline Estimated Capital Cost**

Description	\$ 000
Pipe and Coating	9,695
Valves and Fittings	1,294
Miscellaneous Materials	496
Station Materials	2,266
Stores Overhead	93
<b>Subtotal Materials</b>	<b>\$13,844</b>
Prime Contract	41,776
Stations Contract	2,255
Ancillary Contracts	1,681
<b>Subtotal Contracts</b>	<b>\$45,512</b>
Engineering and Development Costs	16,570
Lands	3,673
<b>Subtotal Engineering &amp; Lands</b>	<b>\$20,243</b>
Contingency	7,472
Financing	199
AFUDC	5,422
<b>Subtotal Miscellaneous</b>	<b>\$13,093</b>
<b>Total</b>	<b>\$92,692</b>

The pipeline would have sectionalizing block valves and blowdown facilities at the connection with the M&NP mainline, at three intermediate sites and at the pressure regulating station located at KP 90.3. The four custody transfer stations off the Saint John Lateral and the one off the Lake Utopia extension

would include facilities for gas filtration, pressure regulation and metering. Facilities would be provided at the KP 90.3 pressure regulating station to odourize gas for delivery at points downstream. The Lake Utopia extension custody transfer station would also include odourant injection equipment. Pig launching and receiving facilities would be installed at the mainline takeoff and at the pressure regulating station at KP 90.3.

The lateral pipeline between KP 0.0 and KP 90.3 as well as the Lake Utopia extension would be designed to accommodate a pressure up to 9 930 kPa (1440 psi) and the section from KP 90.3 to KP 102 would accommodate a pressure of up to 3 450 kPa (500 psi). The Saint John Lateral would have an estimated initial capacity of  $4\ 686\ 10^3\text{m}^3/\text{d}$  (182 103 GJ/d or 172,600 MMBtu/d)<sup>1</sup>.

## 2.2 Safety of Design and Operation

M&NP submitted that the applied-for facilities would be designed, constructed and operated in accordance with the NEB's *Onshore Pipeline Regulations, 1999*<sup>2</sup> (OPR 99) which specify that the design, installation, testing and operation of a pipeline must be in accordance with the applicable provisions of the Canadian Standards Association standard Z662-99, *Oil and Gas Pipeline Systems* and all the applicable standards, specifications and codes that are incorporated by reference in that standard. M&NP has also committed to comply with other applicable federal, provincial and municipal codes and regulations.

M&NP would implement a materials quality assurance program which would include procedures to ensure that line pipe and fabrications are in compliance with the regulations, standards and specifications. The program includes verification and audit programs for vendor qualification, fabrication facilities, vendor performance, and records management and traceability for the pre-production, production and line pipe/fabrication receiving stages of the project.

M&NP would also design and implement a new internal audit program pursuant to section 53 of OPR 99, which would be designed to evaluate and verify that M&NP is abiding by and in compliance with its established procedures, programs and management systems.

During the course of the hearing, evidence was presented which indicated that special consideration and design would be necessary in the area of a historical wooden penstock and dam structure near KP 70.8. M&NP agreed to conduct and file with the Board a risk assessment to determine the likelihood of potential events such as a severe flood or the rupture of the dam and the associated consequences. Evidence also indicated that the structural integrity of the wooden penstock could be impacted by construction activities and that special design considerations may be necessary. M&NP agreed to develop and submit for approval a detailed design for the pipeline crossing in the region of the wooden penstock and a contingency plan in the event of collapse of the penstock during construction activities.

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<sup>1</sup> To convert MMBtu to GJ, multiply by 1.055; to convert GJ to  $10^3\text{m}^3$ , divide by 38.86

<sup>2</sup> SOR/99-294

### *Views of the Board*

The Board is satisfied that the proposed facilities would be designed, constructed and operated in accordance with the NEB Act, OPR 99 and widely accepted industry standards.

The design and configuration of M&NP's proposed facilities are appropriate and will satisfy the firm service requirements and future market growth described more fully in the following chapter.

The Board will condition any certificate to ensure that a risk assessment is filed and that a crossing design and contingency plan are submitted for Board approval prior to the construction of the pipeline crossing in the vicinity of the wooden penstock and dam near KP 70.8.

## **Chapter 3**

# **Gas Supply, Transportation, Markets and Economic Feasibility**

---

### **3.1 Gas Supply**

The natural gas to be transported to customers supplied by the Saint John Lateral would be produced from reserves in the Scotian Shelf located near Sable Island offshore Nova Scotia. During the GH-6-96 proceeding, the SOEP estimated that the total gas resources for the Scotian Shelf were approximately  $512 \text{ } 10^9 \text{ m}^3$  (18.1 Tcf). At that same proceeding, it was determined that the first year daily average deliverability would be approximately  $13.0 \text{ } 10^6 \text{ m}^3/\text{d}$  (506 400 GJ/d or 480,000 MMBtu/d). In its Saint John Lateral application, M&NP relied upon the findings of the NEB, in the GH-6-96 proceeding, the JRP, the Commissioner for the SOEP and the Canada-Nova Scotia Offshore Petroleum Board, all of whom concluded that adequate gas supply was available to support the respective SOEP and M&NP applications.

The JRP concluded that the proponents had used reliable sources for their resource estimates and that a consensus exists among the different government departments and agencies that gas supply is adequate. The JRP also concluded that M&NP had demonstrated sufficient gas reserves and production to support its proposal. Based upon those findings, M&NP submitted that it was unnecessary to review detailed evidence with respect to overall gas supply in the current proceeding.

With respect to project-specific gas supply, M&NP submitted that Duke Energy Marketing Limited Partnership (Duke), Duke Energy Trading and Marketing, L.L.C. and Mobil Oil Canada Properties had executed agreements setting out the basic terms under which the parties would provide gas supply to Irving Oil Limited (Irving Oil) for 50 643 GJ/d (48,000 MMBtu/d) and J.D.Irving, Limited (J.D. Irving) for 16 353 GJ/d (15,500 MMBtu/d). In addition, M&NP stated that Duke and Bayside Power LP (Bayside) had reached agreement on the terms of a gas supply arrangement for 38 508 GJ/d (36,500 MMBtu/d). The initial term of each agreement would be 15 years. Buyers would have the option to renew the supply arrangement for a period of five years upon 18 months notice prior to the end of the initial term of the agreement. To date, no final project-specific supply agreements have been executed between the respective parties.

In light of the fact that no final project-specific gas supply arrangements had yet been concluded and that the Bayside agreement was for only 38 508 GJ/d (36,500 MMBtu/d), which is 7 382 GJ/d (7,000 MMBtu/d) less than the volume contained in the corresponding Firm Service Agreement (FSA), the Board asked M&NP if it would agree to a condition in its certificate requiring M&NP to file executed project-specific gas supply agreements, prior to construction, covering the volumes contained in the FSAs. M&NP submitted that such a condition was unnecessary because the gas supply conditions in the FSAs must be satisfied or waived by dates certain. Moreover, M&NP argued that it would not be a party to the gas supply agreements, the terms and conditions of which would be commercially sensitive. Irving Oil agreed with M&NP that a condition in the certificate was unnecessary and that the terms of the gas supply agreements were commercially sensitive. J.D. Irving, on the other hand, stated that a

condition requiring evidence of agreements was necessary on the grounds that no executed project-specific gas supply arrangements had been concluded as it understood was the case in the Point Tupper Lateral (GH-4-98) and Halifax Lateral (GH-2-99) proceedings.

### **3.2 Transportation Arrangements**

The Certificates of Public Convenience and Necessity issued to SOEP and M&NP pursuant to the GH-6-96 proceeding furnish the necessary approvals for SOEP to construct and operate the upstream facilities that would supply gas and for M&NP to provide transportation to the Saint John Lateral.

M&NP has entered into four FSAs for natural gas transportation service, each with a term of 15 years following the commencement of service. The FSAs with New Brunswick Power Corporation (NB Power) for the Bayside project, Irving Oil (two agreements) and J.D. Irving are summarized in Table 3-1.

**Table 3-1  
Firm Service Agreements**

<b>Customer Name</b>	<b>Market to be Served</b>	<b>Volume<sup>1</sup></b>	<b>Contracted Service</b>	<b>Term</b>
Irving Oil	Oil Refinery	31 652 GJ/d (30,000 MMBtu/d)	MN365 (100% Load Factor)	15 years
Irving Oil	Generating Station	18 991 GJ/d (18,000 MMBtu/d)	MN365 (100% Load Factor)	15 years
J.D. Irving	Pulp and Paper Plants	16 353 GJ/d (15,500 MMBtu/d)	MN365 (100% Load Factor)	15 years
NB Power	Generating Station	45 890 GJ/d (43,500 MMBtu/d)	MN365 (100% Load Factor)	15 years

<sup>1</sup> Both quantities are specified in the FSAs with the primary units being GJ/d.

Pursuant to the terms of the FSAs, gas service commences on 1 November 2000 except for the smaller-volume Irving Oil agreement which provides for the commencement of gas service on 1 November 2001. In addition, the larger-volume Irving Oil agreement is subject to a three-month ramp-up.

Depending on the specific agreement, the FSAs are subject to certain conditions precedent including, among others, a requirement that the customer construct any downstream take-away facilities necessary to accept natural gas and contract gas supply to underpin the FSAs detailed above. In the case of the two Irving Oil FSAs, all conditions have either been satisfied or waived.

### **3.3 Markets**

The markets underpinning the proposed pipeline consist of Irving Oil's refinery in Saint John, J.D. Irving's pulp and paper plants in Lake Utopia and Saint John, and NB Power's Courtenay Bay generating station in Saint John.

Irving Oil owns a large refinery producing a range of petroleum products including motor gasoline and diesel fuel for domestic and export markets. The contracted natural gas from the larger-volume Irving Oil FSA would be used in various refinery processes.

Irving Oil plans to use the contracted gas supply from its smaller-volume FSA in connection with the conversion of Unit No. 4 at NB Power's Courtenay Bay generating station.

J.D. Irving is a diversified forest products firm. The gas acquired under its FSA would be used in the company's pulp and paper manufacturing processes.

The Bayside project will convert Unit No. 3 at NB Power's Courtenay Bay generating station from heavy fuel oil to natural gas. Westcoast Energy Inc. will provide the equity financing for the \$180 million project. All winter and summer electricity from the Bayside project will be sold to NB Power and become part of its system resources. NB Power will export summer power to the New England market using its existing transmission grid. The project is currently under construction.

In addition, M&NP anticipated that further markets would develop following the establishment of a local distribution system for natural gas. In December 1998, the New Brunswick Department of Natural Resources and Energy sent a Request for Proposals to 12 parties who had expressed interest, earlier that year, in natural gas distribution in the province. Two parties applied for the distribution franchise: Gas New Brunswick (GNB) and Maritimes NRG (New Brunswick) Limited. GNB was awarded a 20-year franchise on 7 September 1999.

The Board heard evidence on the potential local distribution market to be served by the Saint John Lateral. Based on its expectation that a distribution franchise would be awarded, M&NP submitted a demand forecast for the local distribution market areas to be served by the Saint John Lateral for years 1, 3, 5, 10 and 15. M&NP forecast an average demand of 26 207 GJ/d (24,841 MMBtu/d) by year 10 of the project.

### **3.4 Economic Feasibility**

M&NP argued that the Saint John Lateral met the Board's test of economic feasibility. In support of its position, M&NP submitted that the subscriptions for transportation service, as evidenced by the four FSAs and the expected development of a distribution franchise, point to the fact that the project meets the test.

There was strong support for the Saint John Lateral from intervenors including GNB, Irving Oil, J.D. Irving, Maritimes NRG (Nova Scotia) Limited, the Province of Nova Scotia Petroleum Directorate, the Province of New Brunswick (New Brunswick) and the Province of Prince Edward Island.

### *Views of the Board*

The Board evaluates the economic feasibility of gas pipeline facilities by determining the likelihood of the facilities being used at a reasonable level over their economic life and the likelihood of the demand charges being paid.

A determination of economic feasibility normally includes, among other factors, the availability of long-term gas supply, the long-term outlook for gas demand in the markets to be served and the contractual commitments underpinning the proposal.

The evidence on overall gas supply, transportation arrangements and markets was uncontested by intervenors. The evidence on project-specific supply was the subject of some discussion. M&NP and Irving Oil argued that a proposed condition was not necessary and that the terms and conditions of the supply agreements were commercially sensitive. J.D. Irving submitted that a condition should be included requiring M&NP to file satisfactory evidence that project-specific gas supply contracts had been executed.

Progress has been made toward concluding project-specific gas supply arrangements. Nevertheless, executed contracts underpinning the volumes contained in the FSAs are not yet in place. The Board has decided, therefore, to include a condition in any certificate requiring M&NP to file with the Board, at least twenty-one (21) days prior to the commencement of construction, assurances that Irving Oil, J.D. Irving and Bayside have executed project-specific gas supply agreements to underpin the volumes contained in the corresponding FSAs. The Board recognizes the commercially sensitive nature of the terms and conditions of the agreements and thus will not require that these be disclosed.

Considering the evidence submitted on supply, transportation arrangements and markets, the Board finds that M&NP has met the Board's test of economic feasibility. There is a strong likelihood that the proposed facilities will be used at a reasonable level over their economic life and that the demand charges will be paid. Therefore, the Board is satisfied that, having had regard to all relevant considerations, the Saint John Lateral is and will be required by the present and future public convenience and necessity.

## **Chapter 4**

# **Environment, Socio-Economic, Consultation, Routing and Land Matters**

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## **4.1 Environment**

### **4.1.1 Comprehensive Study Report**

As the Saint John Lateral would require the construction of more than 75 km of pipeline on new right-of-way, the project required the preparation of a CSR pursuant to the CEAA Comprehensive Study List Regulations. The Board finalized the scope of the Saint John Lateral environmental assessment on 2 October 1998, after soliciting comments from the public on a draft scoping package. The Board also delegated the preparation of the Saint John Lateral CSR to M&NP, pursuant to section 17 of the CEAA, on 2 October 1998.

The CSR described the project, the environmental assessment process, the potential environmental effects, mitigative measures, and the criteria used in evaluating the significance of the environmental effects. Considered in the CSR were the results of public participation, including advice from DFO and expert advice from Environment Canada. The CSR concluded that, given the implementation of the mitigative measures proposed in the CSR, the Saint John Lateral Project is not likely to cause significant adverse environmental effects.

On 9 July 1999, the Board, on behalf of both responsible authorities under the CEAA (the Board and DFO), submitted the CSR to the Minister of the Environment for a decision on the course of action to be taken under section 23 of the CEAA. The CSR was also forwarded to the Agency, which facilitated a public comment process on the CSR concluding on 24 August 1999. The only comments provided on the CSR were submitted by the Union of New Brunswick Indians (UNBI). The UNBI submitted that the CSR had not appropriately assessed the impact of the Saint John Lateral Project on Aboriginal title, land claim negotiations, traditional use of land and resources, health, and burial sites.

On 4 October 1999, having taken into consideration M&NP's CSR, public comments filed pursuant to subsection 22(2) of the CEAA and the Agency's recommendations, the Minister of the Environment concluded that the Saint John Lateral Project is not likely to cause significant adverse environmental effects. As a result, the Minister of the Environment referred M&NP's proposed Saint John Lateral Project back to the Board and DFO for action under subsection 37(1) of the CEAA.

### **4.1.2 Hearing-Related Environment Matters**

In addition to the CSR, the Board used its public hearing process to obtain any further views on environmental issues related to the Saint John Lateral. New Brunswick advised the Board that its concerns regarding environmental matters were being addressed by M&NP through on-going consultation with the province.

In order to ensure implementation of M&NP's proposed mitigative measures, the Board proposed a number of draft certificate conditions, many of which had been attached to the Certificate for M&NP's Halifax Lateral Project. M&NP was concerned over the length of the review or approval period which had been attached to certain of these draft conditions. Specifically, M&NP was concerned that the lead time required for its filings may make it impossible for M&NP to implement its proposed winter clearing schedule. Additionally, M&NP requested that the Saint John Lateral conditions parallel the Halifax Lateral conditions to facilitate administration and limit potential confusion, as both laterals are intended to be constructed in approximately the same time period.

New Brunswick also commented on the draft certificate conditions. In addition to proposing new conditions, New Brunswick emphasized the importance of requiring provincial approval and/or consultation on environmental matters.

Some deficiencies in erosion and sediment control measures had been noted by Board inspection staff during construction inspections of M&NP's Mainline and Point Tupper Lateral. M&NP was questioned on its sediment and erosion control measures and its proposed methodology to comply with this requirement, pursuant to section 48 of the OPR 99, that an Environmental Protection Program be implemented. M&NP restated its commitment to the utilization of a fully qualified environmental inspection team which is fully apprised of its responsibilities as defined by the Environmental Protection Plan (EPP) prepared for the Saint John Lateral. Additionally, M&NP stated that, in its view, it already had a corporate environmental protection program in place. Its program is initiated at the conceptual planning stage for new facilities and carries over into the operation of the facilities. The Saint John Lateral EPP would form one component of M&NP's overall environmental protection program.

### *Views of the Board*

Having received the referral from the Minister of the Environment, the Board has considered the CSR and is of the view that, with the implementation of M&NP's proposed mitigative measures, the Saint John Lateral is not likely to cause significant adverse environmental effects.

During the preparation of the CSR and during the GH-4-99 proceedings, the Board considered all information filed and issues raised pertaining to the environment. Based on this consideration, a number of environment-related certificate conditions have been drafted for any certificate that may be issued for the Saint John Lateral. It should be noted that the Board will carry out its own inspections and audits to monitor compliance with the relevant legislation and conditions of approval.

The Board has considered M&NP's concern regarding the length of review or approval period which was attached to certain proposed certificate conditions and agrees that it is appropriate to reduce some of the time periods. These reductions are reflected in the Saint John Lateral certificate conditions in Appendix II of these Reasons for Decision. The Board is satisfied that the reduced time periods will provide sufficient time for the Board's regulatory process and will enable Board inspection staff to mobilize the necessary resources for inspection of the Saint John Lateral construction.

## **4.2 Socio-Economic Matters**

### **4.2.1 General**

M&NP identified a number of socio-economic concerns as a result of its issue scoping and public consultation processes. The Valued Socio-Economic Components (VSECs), on which M&NP focussed its Socio-Economic Impact Assessment (SEIA), were those potential socio-economic components of concern that may be affected by project activities. The VSECs related to five broad areas: the economy, services, health and safety, land use, and renewable and non-renewable resources. Mitigative measures were recommended to reduce or eliminate potentially adverse effects and, where appropriate, follow-up measures were also recommended. M&NP determined that, taking into account its proposed planning and the implementation of recommended mitigation measures, the project is unlikely to cause any significant adverse effects.

### **4.2.2 Economic Benefits**

The construction of the Saint John Lateral, at an approximate cost of \$93 million, would create considerable direct and indirect economic impacts. To assess these impacts, in terms of the financial returns and jobs created, a Statistics Canada Input-Output Model was used. The model forecast that the Canadian content of all inputs to the project would be 83.5 percent.

The extent to which the province and affected local communities could benefit from project employment and procurement activities was a key economic issue. M&NP expects that 72.6 percent of the Gross Domestic Product (GDP) benefits, or nearly \$41 million, would accrue to the New Brunswick economy. Similarly, at least 75 percent of the prime contract labour force would consist of Maritimers, with more than 72 percent being from New Brunswick.

M&NP stated that it would follow a policy of full and fair access to project economic opportunities for local labour and contractors. To this end, local participation would continue to be promoted through measures such as Business and Employment Opportunities Open Houses and a registration system for potential contractors. To date, firms in the Maritimes have already been awarded contracts for environmental, socio-economic, surveying, engineering, geotechnical and legal services. In cooperation with contractors, government and labour organizations, M&NP has also supported job training programs that provide Maritimers with lasting work skills. M&NP also seeks to work with the Aboriginal community to establish set-asides that reserve a certain portion of contracts exclusively for Aboriginal contractors.

With respect to the operation and maintenance activities of the Saint John Lateral, the six M&NP operational staff responsible for the mainline in New Brunswick would also operate the lateral. The annual budget for these activities is anticipated to total just over \$337,000.

As noted in both the SOEP and M&NP (GH-6-96) and the Halifax Lateral (GH-2-99) hearings, the natural gas pipelines are expected to be a catalyst for further regional development.

#### **4.2.3 Services**

The potential impacts of the project on VSECs relate mostly to local services, in particular to the availability of workers' accommodations and the potential displacement of tourists, and to the potential effect on traffic congestion and safety. These issues hinge largely around the selection of stockpiling sites and marshalling yards, both of which would be chosen based on proximity to the right-of-way, functional working area, site conditions, land use, access to haulage routes, an assessment of local traffic conditions, and the planning and scheduling of construction, among other factors.

With respect to accommodations, M&NP maintained that this should not be a problem due to the availability of commercial accommodations and the anticipated high proportion of local workers who could commute to work sites from their current residences. M&NP forecast that approximately 110 workers may require roofed accommodations during construction; however, Charlotte county has 644 accommodation units available with an average peak summer occupancy rate of 73 percent. Therefore, M&NP expected that any disruptions to tourism would be insignificant. Moreover, M&NP has undertaken to encourage local accommodation suppliers to plan for the heightened business and to register their services at Business and Employment Opportunities Open Houses held in communities close to the preferred right-of-way.

To avoid traffic circulation problems and mitigate any adverse effects, M&NP committed to:

- prepare detailed assessments of local traffic conditions prior to construction
- select marshalling and stockpiling sites with consideration to road and traffic conditions
- schedule project traffic and construction to avoid peak periods and reduce bottlenecks
- use appropriate construction methods to minimize inconvenience
- use traffic control methods (e.g., signage) to reduce traffic hazards
- repair any physical damage to roads

M&NP expects that traffic issues would be manageable with effective planning and believes that there should be no negative impacts given its proposed mitigative measures.

#### **4.2.4 Other Valued Socio-Economic Components**

Concerning health, safety and emergencies, M&NP indicated that the project is similar to other construction activities which are subject to the regulations and standards established to protect individuals and communities. M&NP concluded that it would be unlikely for there to be a significant risk to public health and safety. Although M&NP noted that dust and noise are potential problems, it indicated that the routing of the right-of-way to avoid residences and other sensitive land uses, and the relatively short duration of the construction in any given area could serve to reduce their effect. Where dust is likely to be a problem and the right-of-way passes within 100 m of housing, it would be controlled by watering or other appropriate techniques. As for noise in urban areas, M&NP's normal pipeline construction practice is to use smaller and less powerful equipment than would be employed in rural areas. In addition to its contingency planning, M&NP has held a number of discussions with various emergency response agencies at different levels in order to develop an effective and coordinated Emergency Response Plan.

With respect to land and resource use, M&NP indicated that the right-of-way has been routed to avoid socio-economic components of concern and, where practical, to follow existing rights-of-way. More than 95 percent of the right-of-way is through forested land. Nonetheless, the right-of-way affects a total of 363 landowners and interested parties, and would remove 150 ha of forest from production. To minimize such losses, all affected woodlot owners would be compensated for their current and future losses at fair market value. Other general mitigative measures proposed to address land and resource uses include:

- provision of information and consultation before, during, and after construction
- provision of fair and reasonable compensation
- restoration of lands after construction
- restoration or restriction of access routes, as appropriate

Overall, M&NP's mitigative measures, designed to ensure there are no significant adverse socio-economic impacts resulting from the project, can be summarized as:

- avoidance
- good engineering and construction practices
- enhancement of community economic benefits
- on-going consultation with all involved parties

Moreover, the nature of the project is such that most issues are temporary and of short duration.

#### *Views of the Board*

The Board shares M&NP's view that the main economic benefits from the project would be the long-term benefits of having access to a new energy source. While the benefits of the construction phase would not be as significant, their concentration at a regional level means that New Brunswick would likely obtain over 70 percent of the GDP benefits and jobs created by the project. Moreover, there would be potential spinoffs for local workers and contractors from gaining pipeline experience and thus a higher likelihood of future pipeline work on laterals or local distribution systems in the Maritimes. The Board is satisfied with M&NP's general benefits policies.

The Board concurs that there is unlikely to be any significant strain on local services given their availability and M&NP's proposed mitigative measures. Traffic studies for selecting marshalling and stockpiling sites need to be undertaken well in advance of construction. The Board is satisfied that, with mitigation, any adverse local traffic impacts would be insignificant and reversible.

The Board concludes that, with the proper implementation of M&NP's proposed mitigative measures, there is unlikely to be any significant adverse socio-economic impacts resulting from the project.

### **4.3 Early Public Notification**

M&NP submitted that it had conducted an extensive Early Public Notification (EPN) program for the proposed Saint John Lateral. The purpose of the EPN program, which is required by the Board's

*Guidelines for Filing Requirements* (GFR), is to inform the public about the project, to seek public input into the route selection, environmental assessment and socio-economic impact assessment, to identify issues and concerns of those potentially affected by the project and to resolve issues. M&NP committed itself to early, frequent and meaningful consultation that would be ongoing from the initial development phase of the project through to post-construction monitoring, operation and maintenance.

M&NP's consultation techniques included a series of public open house meetings, video presentations, backgrounder information sheets provided to the public, landowner consultation packages, newspaper and other media advertisements, questionnaires and a toll-free telephone line. M&NP identified several stakeholders to the project including directly affected landowners, federal, provincial and municipal government agencies, First Nations, local businesses, environmental groups, community groups and adjacent landowners. M&NP stated that approximately 2,450 people in New Brunswick were contacted through all phases of the consultation process for the Saint John Lateral.

M&NP stated that all issues raised during its consultations either have been or would be addressed. The common concerns and issues raised by the public included the route selection process, pipeline safety, potential environmental effects, compensation, landowner obligations and limitations, project benefits and economic opportunities. M&NP stated that the input received from the public, stakeholders and government agencies had considerable influence on the location of its preferred right-of-way and the project design. In several instances, adjustments were made to the originally contemplated corridor and preferred right-of-way.

M&NP described its commitment to use its Landowner Consultation Program, developed for its mainline, for the Saint John Lateral. Part of this program includes a Letter of Commitments (LOC) that would be provided to the directly affected landowners along the Saint John Lateral. The purpose of the LOC is to identify issues of concern, promote mutually acceptable solutions, provide advance notice of construction activities and monitor M&NP's responses to ensure timely resolution of issues.

## **4.4 Aboriginal Matters**

### **4.4.1 Aboriginal Issues**

In conducting its heritage assessment, M&NP used several approaches to acquire heritage information including consultation, accessing databases for recorded sites, historical research, predictive modelling and field reconnaissance. In recognition of the fact that there is much unrecorded oral knowledge relating to traditional Aboriginal use, M&NP also contracted a Traditional Ecological Knowledge (TEK) study. The general goal of the TEK program was to gain a deeper understanding of traditional Aboriginal land and resource use practices and to determine the areas of traditional use. Specifically, the study sought to provide M&NP with information relating to physically identifiable resources and sites which are used or considered sensitive by the Maliseet and Passamaquoddy and which may be impacted by construction of the pipeline. Three areas of Aboriginal interest were identified and plotted on constraint mapping so that the route would avoid them.

M&NP acknowledged that the Aboriginal community has a number of other concerns relating to both pipeline and non-pipeline Aboriginal issues and that some of these concerns remain outstanding. Among others, these include:

- generic environmental concerns related to pipeline projects
- protection of burial and ceremonial sites
- impact of the project on treaty rights and land claims
- availability of information
- Aboriginal consultation and involvement in the project, including employment opportunities
- M&NP commitments to the Aboriginal community

M&NP believes that the mitigative measures proposed in its Environmental Report address most of the environmental concerns raised, such as impacts to wetlands or resource harvesting. M&NP's Heritage Resources report and EPP contain further mitigative measures specific to these Aboriginal issues, such as respecting the confidentiality of information and involving Aboriginal people in monitoring programs.

M&NP has committed to working collaboratively with the First Nations throughout the construction and operation of the Saint John Lateral. M&NP recognizes the traditional rights of Aboriginal people to hunt, fish and gather in the project area and believes that these rights would be unaffected by the development and operation of the pipeline. Also, the Saint John Lateral is unlikely to have a significant adverse effect on current use of lands for traditional purposes and, in particular, would not have an impact on the three identified areas of Aboriginal interest. M&NP has also planned for and is committed to additional dialogue with the Aboriginal community.

#### **4.4.2 Aboriginal Consultation**

From the outset, M&NP has attempted to involve the Aboriginal community in its public participation process. Early on, a number of First Nations and Aboriginal Councils and organizations were invited to attend the initial open houses and were sent an information package on the Saint John Lateral Project. At the time, an invitation was also extended by M&NP to meet with these groups to discuss the project and particularly to seek their input into the routing process.

M&NP conducted an extensive consultation process as part of the preparation of its Environmental Assessment, including the assessment of impacts on the current use of lands by Aboriginal people for traditional purposes. Following this, M&NP has continued to consult with First Nations to resolve any remaining concerns they may have with the conclusions reached.

Despite this consultation, the UNBI has expressed some dissatisfaction. The UNBI initially applied for intervenor status; however, it subsequently withdrew and elected instead to make an oral presentation at the hearing. In response to UNBI's oral presentation, both M&NP and New Brunswick submitted that UNBI's concerns had either been addressed through the CSR and related processes or were beyond the scope of the Saint John Lateral hearing.

M&NP indicated that it recognizes and respects the rights of First Nations and maintains that it has been responsible and responsive in both communicating and consulting with the Aboriginal community in New Brunswick. M&NP also stated that it would continue to work in good faith with Aboriginal communities in the Maritimes to ensure that the project and its effects are understood and to identify, address and respond to issues. In support of this view, M&NP provided a listing of contacts with Aboriginal individuals and organizations. It has established Aboriginal liaison positions specifically to facilitate communications with the Aboriginal community, and it continues to communicate with Aboriginal groups including the UNBI.

### *Views of the Board*

M&NP has made a reasonable effort to solicit Aboriginal input into the project as well as to address potential impacts and issues pertaining to First Nations.

The UNBI, through its counsel, chose to withdraw from its status as an intervenor of record, indicating that it wished to make an oral statement during the course of the hearing in accordance with the Board's Directions on Procedure dated 12 July 1999. The UNBI, represented by Chief Benjamin Paul, delivered its oral statement on 12 October 1999. As is usually the case for such statements, it was not made under oath, nor was it subjected to the scrutiny of cross-examination. As such, the UNBI statement does not carry significant weight.

M&NP argued that the UNBI's oral submission was the result of long years of frustration over a wide range of issues and that few, if any, of the items arise in the context of the Saint John Lateral application. Moreover, M&NP and the UNBI have a written and signed Memorandum of Understanding which covers the Saint John Lateral and which provides a means for addressing the UNBI's concerns. Consequently, the Board strongly supports M&NP's commitment to dialogue and believes the building of trust and respect between M&NP and the UNBI is more likely to occur if the parties arrive at their own solutions.

## **4.5 Routing and Land Matters**

M&NP stated that the route selection process for the Saint John Lateral considered environmental, social, technical and economic factors in order to determine which of the three general routing alternatives would be preferred. The preferred route would start at the tie-in point on the mainline near Big Kedron Lake and end at the Irving Oil refinery in Saint John East. The project also includes an 8 km extension from the lateral to the Lake Utopia Paper Mill. Route selection was divided into rural and urban processes, having regard for the issues unique to each environment.

### **4.5.1 Rural Route Selection Process**

In its application, M&NP identified a study area for selection of potential corridors for the rural portion of the Saint John Lateral from the take-off on the main line to King William Road (east of Spruce Lake). Within the rural study area, three alternative corridors were identified, having regard to the length of each corridor, existing linear development and the constraints identified along each corridor. The corridor selected was preferred because, on balance, it had the lowest number and area of environmental, socio-economic, engineering and construction constraints of the three corridors evaluated.

M&NP presented its preferred rural corridor to the public through open houses conducted at Pennfield and Dipper Harbour in mid-September 1997. Thereafter, M&NP conducted a more detailed analysis of its preferred corridor based on the input received from the open houses, data review, additional research and selected field surveys. This additional information provided for more detailed and expanded constraint mapping at a scale of 1:50,000.

M&NP classed the various constraints according to environmental and socio-economic significance, and engineering and construction considerations. It determined that Class 1 constraints must be avoided,

given that mitigation may not be possible; Class 2 constraints should be avoided, but could be mitigated; and Class 3 constraints were preferred to be avoided and, if not, may require special construction practices.

Based on a review of the original data and information received as a result of field studies, M&NP made some adjustments to its preferred corridor. Adjustments were made to avoid a number of environmental, land fabric and construction constraints encountered by the initial alignment. Additional open houses were conducted at Musquash and Pennfield at the end October 1997 to present the adjusted rural corridor to the public.

Once its preferred corridor was determined, M&NP selected a preliminary preferred 20 m wide right-of-way within the corridor, based on constraint mapping, assessment of field data and input received through its public consultation process. The primary criterion in the selection of the preliminary right-of-way was to consider topographic features while avoiding or minimizing the potential effects of the right-of-way on identified constraints and resources. The right-of-way selection process also considered following existing linear features as much as possible. The resulting preferred right-of-way was detailed in M&NP's Saint John Lateral Supplementary Information Report (Supplementary Report) filed with the Board in April 1999.

#### **4.5.2 Urban Route Selection Process**

M&NP delineated a study area for the urban portion of the Saint John Lateral encompassing an area approximately 7 km wide. The western boundary of the study area is King William Road (east of Spruce Lake), and the eastern boundary is aligned with McAllister Drive and Champlain Heights. M&NP determined that a corridor width of 100 m for the urban portion of the Saint John Lateral was appropriate due to the concentration of residences, commercial development, utility and roadway infrastructure, and land use conflicts.

Consideration of the urban corridor alternatives was restricted to major existing linear developments such as highways, transmission lines, railway lines and avoidance of potential contaminated soil areas. This was required in order to minimize disruption to urban property owners and to reduce potential effects on natural, residential, commercial and industrial areas.

The preferred urban corridor was presented to the public through open houses conducted at Milford and Saint John in early October 1997. The urban corridor was further refined as a result of input received through the open houses, information from landowners, aerial and ground reconnaissance, selective field surveys, evaluation of technical constraint mapping at a scale of 1:50,000 and consideration of all the constraints used for evaluation of the rural corridor. Further, M&NP evaluated additional constraints that are characteristic to the urban environment. These included road, highway, utility and railway crossings, and potentially contaminated sites, as well as provincial and municipal construction restrictions.

Once the preferred urban corridor was selected, M&NP evaluated a preliminary preferred right-of-way within the urban corridor. The preferred right-of-way was selected based on continued analysis of constraint mapping (1:10,000, 1:5,000 and 1:2,000 scales), focussed field surveys, and comments from landowners, interested parties and government agencies. The preferred right-of-way was also presented to the public through two open houses held in Saint John in early November 1997.

#### **4.5.3 Route Modifications**

M&NP's Supplementary Report included a description of 18 route modifications that M&NP had made to its preferred route since the preparation of its Environmental Report in February 1998. The modifications were made as a result of field studies conducted in 1998 and 1999, engineering studies, and discussions held with landowners and government agencies. These modifications addressed landowner concerns, and resulted in improved constructibility and the avoidance of numerous constraints including wetlands, watercourse crossings, potential acid generating bedrock, steep slopes, a burial site, a raptor's nest and gravel pits. M&NP used the same constraint mapping methodology in evaluating the route modifications it used to establish its original preferred corridor and route.

##### *Views of the Board*

The Board considers the corridor and route selection process undertaken by M&NP for the rural and urban portions of the Saint John Lateral to be appropriate. M&NP's proposed corridor location and the general preferred right-of-way located within the corridor, as well as the modified general route proposed in the Supplementary Report, are acceptable to the Board.

### **4.6 Land Requirements**

M&NP proposed a 20 m wide right-of-way for the majority of the 110 km route of the Saint John Lateral, including the Lake Utopia extension. In certain congested urban areas, the right-of-way width may be reduced to as little as 7 m to accommodate land use constraints. M&NP stated that it was still in the process of evaluating the appropriate right-of-way widths for the urban portion of the Saint John Lateral.

M&NP stated that it would seek landowner agreement for a continuous 5 m of temporary work room (TWR) on each side of the full length of the easement. M&NP also stated that it would require TWR where the easement area is insufficient for construction needs. TWR would be required where the pipeline crosses roads, railways and watercourses; at directional drilling locations, sharp bend areas and steep slopes; and in areas where the right-of-way width is reduced. The additional area is needed for preparation of crossing pipe sections and stockpiling of grade material and ditch spoil. At crossing locations, TWR would typically require an area of 10 m by 120 m on each side of the easement. In other locations, TWR dimensions would be selected to suit the construction requirements.

M&NP has secured the land rights for the mainline take-off valve site and is in the process of securing the land rights for three intermediate valve sites, the regulating station and the five custody transfer stations.

##### *Views of the Board*

The amount of land required for easements and TWR, have been considered by the Board. The Board finds that M&NP's anticipated requirements for easements and TWR are reasonable and justified.

## **Chapter 5**

# **Tariff Matters**

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### **5.1 M&NP's Lateral Policy**

M&NP asked the Board to confirm that under M&NP's Lateral Policy no contribution-in-aid of construction is required for the Saint John Lateral and that the full cost of service of the lateral be included in the calculation of M&NP's tolls.

The Board approved the Lateral Policy and the postage stamp toll design for M&NP in its GH-6-96 decision. At that time, the Board anticipated a toll of approximately \$0.57/GJ (\$0.60/MMBtu) which it believed struck a balance between the encouragement of the development of gas markets in Nova Scotia and New Brunswick and the ability of M&NP to remain competitive in its markets.

The Lateral Policy provides that M&NP would construct facilities to deliver gas to one or more customers without requiring a contribution-in-aid of construction, provided that the contract demand, based on a test toll of \$0.57/GJ (\$0.60/MMBtu), generates sufficient revenue in each year over the term of the contract(s) to recover the cost of service associated with the requested facilities. If the contracted demand level is insufficient to recover the cost of the facilities under the test toll, the customer(s) may be required to contribute to the cost of constructing the facilities. Under certain circumstances, M&NP may waive the requirement for a contribution-in-aid of construction. The Lateral Policy can be found at article 17 of M&NP's tariff, which is reproduced in Appendix III of these Reasons for Decision.

The application for the Saint John Lateral is supported by four contracts totalling 112 886 GJ/d (107,000 MMBtu/d) for 15 years. M&NP submitted that, on the basis of the contracts underpinning this application, the applied-for Saint John Lateral meets the test. The project yields a stand-alone toll of \$0.562/GJ in year 1, reducing to \$0.295/GJ in year 15. The fact that the project meets the Lateral Policy test was not challenged by any party.

### **5.2 Pooling of Projects**

In its application, M&NP referenced a request of NB Power to combine its contracted quantities on the Saint John Lateral with its contracted quantities on any future Northern New Brunswick Lateral. This request was based on the following paragraph in section 17.1 of the Lateral Policy and provoked considerable interest and discussion during the hearing:

Where a Customer requests service that requires more than one set of facilities to be constructed in the same time frame, as determined by Pipeline, such sets of facilities can be considered as one project for the purpose of calculating the need for any contribution.

This provision to combine projects to meet the provisions of the Lateral Policy test was referred to throughout the proceeding as "pooling." M&NP was asked to provide its interpretation of how this pooling concept might operate. Extensive cross-examination and argument followed, with some intervenors being particularly concerned that M&NP's responses might be considered as potential

amendments to this provision of the Lateral Policy. M&NP confirmed that its answers had been intended to contribute to the discussion of the issue and that those answers did not reflect any change to its Lateral Policy. Noting the high level of interest, M&NP undertook to initiate a full discussion of the issue of pooling with its Tolls and Tariff Working Group (TTWG).

#### *Views of the Board*

The Board accepts that the Saint John Lateral, as applied-for, meets the test as set out in article 17 of M&NP's tariff and that no customer contribution will be required in connection with the construction of these facilities.

While concerns were raised about the pooling provisions in the Lateral Policy, it was not an issue requiring a decision of the Board in this hearing. M&NP stated that nothing in this proceeding was intended to amend the Lateral Policy as set out in article 17 of its tariff. Accordingly, the Board affirms that its decision in this proceeding does not have any effect on article 17 of M&NP's tariff. M&NP has committed to address these issues in the immediate future through its TTWG. If parties fail to resolve their concerns through the TTWG meetings, they could apply to the Board to have article 17 of the tariff re-examined.

## Chapter 6

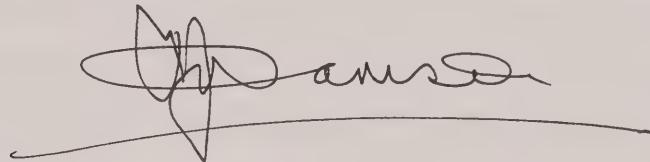
### Disposition

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The foregoing chapters constitute our Reasons for Decision in respect of the application heard by the Board in the GH-4-99 proceeding.

The Board is satisfied that the proposed Saint John Lateral Project is, and will be, required by the present and future public convenience and necessity, provided that the terms and conditions outlined in Appendix II are met. Therefore, subject to the approval of the Governor in Council, a Certificate of Public Convenience and Necessity will be issued pursuant to Part III of the NEB Act.

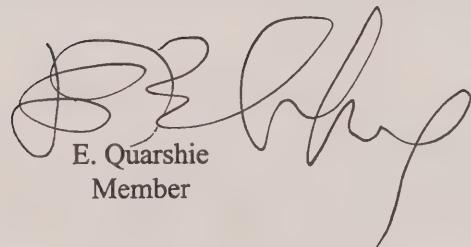
The Board confirms that no contribution-in-aid of construction is required for the Saint John Lateral and that the full cost of service of the Saint John Lateral should be included in the calculation of M&NP's tolls.



R. Harrison  
Presiding Member



J.-P. Théorêt  
Member



E. Quarshie  
Member

Calgary, Alberta  
November 1999

## **Appendix I**

### **List of Issues**

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The Board has identified, but does not limit itself to, the following issues for discussion in the proceeding:

1. The economic feasibility of the proposed facilities.
2. The appropriateness of the design of the proposed facilities.
3. The safety of the design and operation of the proposed facilities.
4. The potential environmental and socio-economic effects of the proposed facilities.
5. The appropriateness of including the full cost of service of the Saint John Lateral in calculating M&NP's tolls.
6. The appropriate terms and conditions to be included in any approval which may be granted.

## **Appendix II**

# **Certificate Conditions**

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### **Prior to and During Construction**

1. Unless the Board otherwise directs, M&NP shall cause the approved facilities to be designed, manufactured, located, constructed and installed in accordance with the specifications, drawings and other information or data set forth in its application or as otherwise adduced in evidence before the Board in the GH-4-99 proceeding.
2. Unless the Board otherwise directs, M&NP shall implement or cause to be implemented all of the policies, practices and procedures for the protection of the environment included in or referred to in its application, in its undertakings made to relevant regulatory authorities, and as adduced in evidence before the Board in the GH-4-99 proceeding.
3. Unless the Board otherwise directs, M&NP shall file with the Board, at least twenty-one (21) days prior to the commencement of construction, assurances that Irving Oil Limited, J.D. Irving, Limited and Bayside Power LP have concluded project-specific gas supply agreements to underpin the volumes contained in the corresponding Firm Service Agreements.
4. Unless the Board otherwise directs, M&NP shall file with the Board, at least fourteen (14) days prior to the commencement of clearing and twenty-one (21) days prior to the commencement of ground-breaking activities, a detailed construction schedule or schedules identifying major construction activities, including clearing, and shall notify the Board, the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy of any modifications to the schedule or schedules as they occur.
5. Unless the Board otherwise directs, M&NP shall file with the Board a detailed Communication Plan outlining the method M&NP will use to ensure that all construction techniques and mitigative strategies are available to field and construction staff, and that such measures are implemented.
6. Unless the Board otherwise directs, M&NP shall file with the Board, at least fourteen (14) days prior to the commencement of clearing and twenty-one (21) days prior to the commencement of ground-breaking activities, an inspection program that includes a detailed list of the number and type of each inspection position, including job descriptions and qualifications, that will be responsible for the inspection of the various pipeline construction operations, including environment and safety.
7. Unless the Board otherwise directs, M&NP shall file with the Board, and maintain at its construction office(s), copies of any permits, approvals or authorizations for the applied-for facilities issued by federal, provincial and other permitting agencies, which include environmental conditions or site-specific mitigative, monitoring and restorative measures. In addition, M&NP shall file with the Board, and maintain at its construction office(s), an

information file(s) which would include any subsequent variations to any permits, approvals or authorizations obtained prior to, or following, the commencement of construction.

8. Unless the Board otherwise directs, M&NP shall maintain for audit purposes, at each construction site, a copy of the welding procedures and non-destructive testing procedures used on the project, together with all supporting documentation.
9. Unless the Board otherwise directs, M&NP shall file with the Board for approval, at least twenty-one (21) days prior to the commencement of ground-breaking activities, updated copies of the Environmental Protection Plan, and advise as to whether Environment Canada, the Department of Fisheries and Oceans, the New Brunswick Department of the Environment, and the New Brunswick Department of Natural Resources and Energy concur with the specific measures proposed therein.
10. Unless the Board otherwise directs, M&NP shall file with the Board for approval, at least fourteen (14) days prior to the commencement of ground-breaking activities, its Acid Rock Drainage Mitigation Program and the results of its Acid Rock Sampling and Assessment Program. The results of M&NP's consultations with Environment Canada, the Department of Fisheries and Oceans, the New Brunswick Department of Environment, and the New Brunswick Department of Natural Resources and Energy shall also be submitted.
11. Unless the Board otherwise directs, M&NP shall limit the placement, disposal or stockpiling of logs, grade material and rock blasted, cut, or excavated from the approved right-of-way and temporary workspace:
  - (a) within the boundaries of the approved right-of-way and temporary workspace;
  - (b) at a location deemed satisfactory by the owner of the land over which the pipeline crosses; or
  - (c) at an appropriate location located away from the pipeline for which M&NP has received landowner approval for disposal.
12. Unless the Board otherwise directs, M&NP shall file with the Board for approval, at least thirty (30) days prior to disturbance of any deer wintering area, the results of its consultation with the Regional Biologist and any other appropriate representative(s) of the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy regarding M&NP's crossing of any deer wintering area. This filing should include any agency concerns, comments and recommended mitigation.
13. Unless the Board otherwise directs, all clearing of trees and other vegetation shall be undertaken during the preferred construction windows for protection of migratory birds as established by Environment Canada - Canadian Wildlife Service, the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy. If clearing is to be undertaken outside of the preferred construction window, M&NP shall consult with the above-noted agencies and file with the Board for approval the results of its consultation. This filing should include any agency concerns, comments and recommended mitigation.

14. Unless the Board otherwise directs, M&NP shall ensure that the seed mixes used for reclamation contain species that are native or naturalized to New Brunswick, with the exception of those seed mixes used for previously disturbed or agricultural areas. Seed mixes shall not contain reed canary grass, black knapweed or ox-eye daisy.
15. Unless the Board otherwise directs, M&NP shall submit to the Board, at least twenty-one (21) days prior to the commencement of construction at all wet watercourse crossings, additional information regarding each watercourse crossing. The additional information shall include:
  - (a) a construction schedule for each crossing;
  - (b) the detailed construction designs for each crossing;
  - (c) the proposed duration of the construction of each crossing;
  - (d) all site-specific and generic construction and mitigation plans;
  - (e) copies of all correspondence from the Department of Fisheries and Oceans, the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy regarding watercourse crossings, including evidence to demonstrate that all issues raised by regulatory agencies have been adequately addressed; and
  - (f) the status of approvals, including any environmental conditions imposed on approvals which have been received.
16. Unless the Board otherwise directs, M&NP shall submit to the Board for approval, at least twenty-one (21) days prior to the commencement of construction of each watercourse crossing known to be present at the time of the GH-4-99 proceeding, additional information regarding acid rock drainage and mitigation at watercourse crossings in areas of potential acid producing rock as developed in consultation with Environment Canada, the Department of Fisheries and Oceans, the New Brunswick Department of Environment and the New Brunswick Department of Natural Resources and Energy. The additional information shall set out for each watercourse crossing to be affected:
  - (a) the name and location of the watercourse (including reference to kilometre-post);
  - (b) the selected treatment method of the runoff water;
  - (c) site specific mitigative, monitoring and restorative measures to be employed as a result of consultation with regulatory agencies;
  - (d) evidence to demonstrate that all issues raised by regulatory agencies have been adequately addressed, including all necessary updates to the environmental assessment; and
  - (e) the status of approvals, including any environmental conditions imposed on approvals which have been received.

17. Unless the Board otherwise directs, M&NP shall consult with the Archaeological Services of New Brunswick on further studies and a monitoring plan for areas with high potential for heritage resources, once the locations for detailed right-of-way, facility sites and temporary work space have been determined. Unless the Board otherwise directs, M&NP shall file with the Board for approval, at least thirty (30) days prior to the commencement of ground-breaking activities, a report on the agreed-upon studies, their status, and the proposed monitoring plan.
18. Unless the Board otherwise directs, M&NP shall notify the Board, at the time of discovery, of any archaeological or heritage resources and, as soon as reasonable thereafter, file with the Board for approval a report on the occurrence and proposed treatment of the archaeological/heritage resources, any changes to the archaeological/heritage monitoring plan, and the results of any consultation, including a discussion on any unresolved issues.
19. Unless the Board otherwise directs, M&NP shall, at least fourteen (14) days prior to construction of the pipeline in the area of the wood stave penstock and dam (KP 70.8):
  - (a) file with the Board a risk assessment which examines the potential for flooding and dam failure events and the associated consequences;
  - (b) submit for the approval of the Board a detailed penstock crossing design including construction procedures and any special pipeline protection measures to be used in this area; and
  - (c) submit for the approval of the Board a contingency plan for the construction phase of the crossing.
20. Unless the Board otherwise directs, M&NP shall file with the Board, at least twenty-one (21) days prior to the commencement of construction, a detailed waste management plan to be developed in consultation with the appropriate federal, provincial and municipal authorities which, among other things:
  - (a) identifies all federal, provincial and municipal waste management requirements relevant to pipeline construction;
  - (b) categorizes all potential waste generated during construction, including slash and vegetation; and
  - (c) identifies the proposed management method for waste in each category and approved landfill sites for disposal, if applicable.
21. Unless the Board otherwise directs, M&NP shall submit monthly construction reports, that are satisfactory to the Board, which detail the progress and current status of the project.
22. Unless the Board otherwise directs, M&NP shall file with the Board, prior to the commissioning of the Saint John Lateral, an action plan, to be developed in consultation with Environment Canada, for minimizing and accounting for greenhouse gas emissions for all of M&NP's

facilities in Atlantic Canada. M&NP shall file the results of this action plan with the Board and Environment Canada on an annual basis prior to the end of each calendar year.

### **Post Construction**

23. Unless the Board otherwise directs, M&NP shall file with the Board a post-construction environmental report within six (6) months after the date of the granting of leave to open the pipeline. The post-construction environmental report shall set out the environmental issues that have arisen up to the date on which the report is filed and shall:
  - (a) indicate the issues resolved and those unresolved; and
  - (b) describe the measures M&NP proposes to take in respect of the unresolved issues.
24. Unless the Board otherwise directs, M&NP shall file with the Board on or before the 31 January that follows each of the first two complete growing seasons following the filing of the post-construction environmental report referred to in Condition 23:
  - (a) a list of the environmental issues indicated as unresolved in the report and any that have arisen since the report was filed; and
  - (b) a description of the measures M&NP proposes to take in respect of any unresolved environmental issues.

## **Appendix III**

### **M&NP's Lateral Policy<sup>1</sup>**

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#### **17. Policy with respect to Fees and Construction of New Facilities**

17.1 Customers may request that Pipeline construct a pipeline extension (other than a mainline extension) from Pipeline's existing facilities to deliver gas to one or more Customers, including new delivery points and enlargements or replacements of existing laterals. Pipeline is not required to build facilities upon Customer request or otherwise if a government of a province in which the facilities would be located objects or if, as determined by Pipeline in its reasonable judgment, such facilities are not operationally feasible, will adversely impact on Pipeline's existing services or would otherwise adversely impact on Pipeline's system. In the event Pipeline decides to construct such facilities and the contracted demand requested by a Customer generates sufficient revenue each year, based on a test toll of \$0.60/MMBtu (\$0.5687/GJ) designed to maintain the competitiveness of Pipeline's tolls, to recover the annual cost of service associated with the incremental capital and operating cost of the facilities, Pipeline will proceed to construct the facilities without any contribution from the Customer. The test toll will remain in place until Pipeline's first mainline expansion at which time the appropriateness of the test toll may be revisited. If the facilities do not generate sufficient revenue to cover the cost of service associated therewith, Pipeline will require a Customer contribution in accordance with the following:

- (a) The annual cost of service associated with the facilities will be calculated for each year using conventional cost of service methodology based on Pipeline's estimate of the capital and operating costs of the facilities and a depreciation rate based on the term of the shipper's transportation contract.
- (b) A contribution will only be based on the period in which the facilities generate a revenue deficit.
- (c) Customers have the option of paying the contribution as a single lump-sum payment at the commencement of the facilities project or as a unit surcharge that would amortize the contribution over the term of the contract. If Customer elects to pay a surcharge, the surcharge may be adjusted up or down in future years, if existing Customers request additional service, or any new Customers request service, on the same facilities.

Where a Customer requests service that requires more than one set of facilities to be constructed in the same time frame, as determined by Pipeline, such sets of facilities can be considered as one project for the purposes of calculating the need for any contribution.

17.2 Pipeline may waive from time to time, at its discretion, all or a portion of the monetary reimbursement requirement set forth in Section 17.1 if it determines that construction of the

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<sup>1</sup> Excerpted from M&NP's Gas Transportation Tariff approved by the Board in a letter dated 17 September 1999.

facilities would be economic, based on Customer assurance of transportation throughput through the proposed facilities and other matters, as described below. All requests for waiver shall be handled by Pipeline in a manner which is not unduly discriminatory.

For purposes of determining whether a project is economic, Pipeline will evaluate projects on the basis of various economic criteria, which may include, without limitation, the estimated transportation throughput, cost of the facilities, operating, maintenance, administrative and general expenses attributable to the facilities, the system net revenues Pipeline estimates will be generated subsequent to such construction and the availability of capital funds on terms and conditions acceptable to Pipeline. In estimating the system net revenues to be generated, Pipeline will evaluate the existence of capacity limitations of the existing facilities, the marketability of the capacity, the location of the markets, the nature of the transportation service, and other factors with impact the utilization of Pipeline's system.

- 17.3 Any monetary reimbursement due Pipeline by Customer pursuant to this Article 17 shall be due and payable to Pipeline within ten (10) Days of receipt by Customer of Pipeline's invoices for same; provided, however, such monetary reimbursement, plus carrying charges thereon, may be amortized over the contract term or a mutually agreeable period. Carrying charges shall be computed utilizing interest factors acceptable to both Pipeline and Customer.
- 17.4 Nothing in this statement of policy shall require Pipeline to file an application for a certificate of public convenience and necessity under Part III of the *National Energy Board Act*. Further, nothing in this policy statement shall prevent Pipeline from contesting an application for the provision of facilities filed pursuant to subsection 71(3) of the *National Energy Board Act* or a request to compel the rendition of service pursuant to subsection 71(2) of the *National Energy Board Act*. Pipeline reserves the right to seek a waiver of the policies set forth in this Article 17 for good cause shown during any proceeding before the NEB.





Canada